

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 EVIER DIAZ PAEZ,

5 Petitioner

6 v.

7 DWIGHT NEVEN, et. al,

8 Respondents

Case No.: 2:16-cv-02737-JAD-NJK

**Order Granting Motion to Dismiss  
Unexhausted Grounds and to Construe  
Ground 4 as a Sixth Amendment Claim**

[ECF No. 44]

9 On January 15, 2019, I granted respondents' motion to dismiss in part after finding  
10 several of habeas petitioner Evier Diaz Paez's claims unexhausted.<sup>1</sup> Among those grounds was  
11 Ground 4, which asserted a due process violation. Because Ground 4 would be exhausted if  
12 construed as a Sixth Amendment claim, I indicated that I would construe Ground 4 as a Sixth  
13 Amendment claim if petitioner submitted a notice that he would like Ground 4 so construed. I  
14 ordered petitioner also to file either: (1) a motion to dismiss seeking partial dismissal of only the  
15 unexhausted claims; (2) a motion to dismiss the entire petition without prejudice in order to  
16 return to state court to exhaust the unexhausted claims; and/or (3) a motion for other appropriate  
17 relief, such as a motion for a stay and abeyance to hold the exhausted claims in abeyance while  
18 petitioner returns to state court to exhaust the unexhausted claims.

19 Petitioner has moved to construe Ground 4 as a Sixth Amendment claim and for  
20 dismissal of his unexhausted claims.<sup>2</sup> Good cause appearing, IT IS HEREBY ORDERED that  
21 petitioner's motion [ECF No. 44] is **GRANTED**: the court will construe Ground 4 as a Sixth  
22 Amendment effective-assistance-of-counsel claim.

23 IT IS FURTHER ORDERED that **Ground 5, Ground 7, in part, as set forth in my**  
24 **order of January 15, 2019, Ground 8, and Ground 9 except as to Ground 9(D) are**  
25 **DISMISSED** without prejudice.

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27 <sup>1</sup> ECF No. 43.

28 <sup>2</sup> ECF No. 44.

1 IT IS FURTHER ORDERED that **respondents have until April 15, 2019, to file an**  
2 **answer** to the remaining claims in the petition. Petitioner will have 30 days from service of the  
3 answer to file a reply.

4 Dated: February 14, 2019

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7 U.S. District Judge Jennifer A. Dorsey  
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